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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,422	10/17/2001	Steve Dispensa	1587	6255

28004 7590 03/30/2009

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KSOPHT0101-Z2100
OVERLAND PARK, KS 66251-2100

EXAMINER	
BILGRAMI, ASGHAR H	
ART UNIT	PAPER NUMBER
2443	
MAIL DATE	DELIVERY MODE
03/30/2009	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVE DISPENSA

Appeal 2008-3995
Application 09/981,422
Technology Center 2400

Decided:[1] March 30, 2009

Before JOSEPH L. DIXON, ST. JOHN COURTENAY III, and
THU A. DANG, *Administrative Patent Judges.*

COURTENAY, Administrative Patent Judge.

DECISION ON APPEAL

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Data (electronic delivery).

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-11, 13-41, 43-70, and 72-175. Claims 12, 42, and 71 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

THE INVENTION

Appellant's invention relates generally to the field of communication systems. More specifically, in one embodiment, Appellant's invention relates to a system that provides wireless broadband services. (Spec. 2).

Independent claim 1 is illustrative:

1. A method of providing performance information of a communication network, the method comprising:

in a performance management system, generating and transmitting a graphical overview of the communication network to a user system;

receiving an instruction to request the performance information for a selected region of the communication network into the performance management system from the user system;

in the performance management system, processing the instruction to determine the performance information;

in the performance management system, generating a graphical format of the performance information;

storing the graphical format of the performance information in a repository; and

transmitting the graphical format of the performance information from the performance management system to the user system.

PRIOR ART

The Examiner relies upon the following references as evidence in support of the obviousness rejections:

Opoczynski	US 5,519,830	May 21, 1996
Dev	US 5,751,933	May 12, 1998
Moura	US 6,411,606 B1	Jun. 25, 2002
Groath	US 6,571,285 B1	May 27, 2003

THE REJECTIONS

1. Claims 1-11, 13-16, 18, 19, 27-41, 43-46, 48, 49, 57-70, 72-75, 77, 78, 86-104, 106, 107, 115-133, 135, 136, 144-161, 163, 164 and 172-175 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Groath and Dev.

2. Claims 17, 47, 76, 105, 134, and 162 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Groath and Moura.

3. Claims 20, 50, 79, 108, 137, and 165 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Groath, Dev, and Opoczynski.

4. Claims 21-26, 51-56, 80-85, 109-114, 138-143, and 166-171 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Groath, Dev, Opoczynski, and Moura.

GROUPING OF CLAIMS

Appellant argues independent claims 1, 31, 61, 90, 119, and 148 as a group and states that all claims dependent therefrom are allowable for at least the reasons provided in support of claims 1, 31, 61, 90, 119, and 148. (App. Br. 13).

We accept Appellant's grouping of the claims. *See* 37 C.F.R. § 41.37(c)(1)(vii) ("Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.").

We will, therefore, treat claims 1-11, 13-41, 43-70, and 72-175 as standing or falling with representative claim 1.

APPELLANT'S CONTENTIONS

Appellant contends that the Examiner erred in rejecting each independent claim on appeal because "[a]t no point does Groath mention storing a graphical format of performance information to a database, as provided by claims 1, 31, 61, 90, 119 and 148 of the present application. In fact, Groath makes specific mention of storage of *key codes* by way of data warehousing techniques, which necessarily employ a numeric format, and *not* a graphical format." (App. Br. 11-12, emphasis in original).

EXAMINER'S RESPONSE

The Examiner points to Appellant's disclosure in the Specification (p. 8, ll. 8-18) that "[i]n some embodiments, the graphical format is a web page, a report, or screen." (Ans. 14). The Examiner further points to Groath's teaching of storing standardized format data in a database at column 2, lines 6-23 (Ans. 15). The Examiner finds that Groath's collected network status data is concatenated and reformatted into a standard format prior to being stored in the database, and thereafter that data is utilized to graphically convey the network availability. (Ans. 15). The Examiner further proffers that Groath describes one of the standardized formats to be Hyper Text Markup Language (HTML). (Ans. 15).

ISSUE

Based upon our review of the administrative record, we have determined that the following issue is dispositive in this appeal:

> Has Appellant shown that the Examiner erred in finding that the combination of Groath and Dev teaches and/or suggests storing a graphical format of the performance information in a repository, as recited in equivalent form by each of independent claims 1, 31, 61, 90, 119, and 148?

PRINCIPLES OF LAW

"What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under *§ 103*." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007). To be nonobvious, an improvement must be "more than the predictable use of prior art elements

according to their established functions." *Id.* at 1740. "Invention or discovery is the requirement which constitutes the foundation of the right to obtain a patent . . . unless more ingenuity and skill were required in making or applying the said improvement than are possessed by an ordinary mechanic acquainted with the business, there is an absence of that degree of skill and ingenuity which constitute the essential elements of every invention." *Dunbar v. Myers*, 94 U.S. 187, 197 (1876) (citing *Hotchkiss* v. *Greenwood*, 52 U.S. 248, 267 (1850)) (*Hotchkiss* v. *Greenwood* was cited with approval by the Supreme Court in *KSR*, 127 S. Ct. at 1734, 1739, 1746).

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006). Therefore, we look to Appellant's Briefs to show error in the Examiner's proffered prima facie case.

FINDINGS OF FACT

In our analysis *infra*, we rely on the following findings of fact (FF) that are supported by a preponderance of the evidence:

THE GROATH REFERENCE

1. Groath teaches that "[a]n embodiment of the present invention includes a database schema for storing and reporting on network element performance data." (Col. 11, ll. 64-65).
2. Groath teaches the use of a Performance Data Manipulator (PDM) that "is a script that processes log files that have been

collected by Data Acquisition in order to load the data into a database." (Col. 11, ll. 53-55).

3. Groath teaches that "[t]he PDM converts the log files from formats specific to a particular monitoring program into a common format. PDM then formats the file based on data warehousing techniques which include converting nodes and performance metrics to key codes which are stored in the database. The coded data file is then bulk loaded into the database. The PDM may be written in PERL." (Col. 11, ll. 56-62).
4. Groath teaches that "[a] graph is generated in operation 1604 from the data that matches the report parameters. In operation 1606, the generated graph is displayed to graphically represent the monitored elements, services, and processes of the network." (Col. 65, ll. 30-33).
5. Groath teaches that report graphs may be changed by the user and saved: "[t]o change the chart properties (on IGRAPHs) and set it to a CHARTLOOK, double click on the graph in the output viewer. This will activate it into interactive mode. Go up to Format>Chart Properties in the menu bar and make necessary changes in the tabbed dialog box. Some changes include: Text size (the title and subtitle text size seems not to take in the CHARTLOOK option when set here--FYI), Font, Symbol attributes (shape, color, fill, etc), Axis attributes (line width, tick marks), colors (for legends, shapes, etc), and other features that need to be changed." (Col. 72, ll. 17-26)

6. Groath teaches that "[a]fter changing what you want, click Apply to view changes and OK to exit the dialog box. Then go to the menu bar Format>Chartlook and click on Save As with the 'as displayed' feature highlighted in the box to the left. Save the chartlook to a location that can be called from the macro. This chartlook should then set the settings for the next graphs run with the /CHARTLOOK='file' subcommand in the IGRAPH syntax." (Col. 72, ll. 27-34).

ANALYSIS

We decide the question of whether Appellant has shown the Examiner erred in finding that the combination of Groath and Dev teaches and/or suggests storing the graphical format of performance information in a repository, as recited in equivalent form by each of independent claims 1, 31, 61, 90, 119 and 148.

Claim Construction

We begin our analysis by broadly but reasonably construing the claimed "graphical format" in light of Appellant's Specification. While Appellant argues forcefully in the Briefs that Groath does not teach or suggest storing a graphical format of performance information, we find Appellant's remarks to be conspicuously silent regarding the intended scope of the claimed "graphical format."

"[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000). As pointed out by the Examiner, Appellant's Specification expressly discloses that "[i]n some embodiments,

the graphical format is a web page, a report, or screen." (Spec. 8, ll. 18-19). Therefore, we broadly but reasonably construe the intended scope of the claimed "graphical format" as encompassing any graphical format, including a report or associated report format.

Based upon our review of the evidence, we find that Groath teaches a database schema for storing and reporting on network element performance data (FF 1). Groath's collected log file data is processed by a Performance Data Manipulator (PDM) script that formats the performance data for storage in a database. (FF 2-3).

Groath also teaches that a graph is generated in operation 1604 from the data that matches the report parameters. (FF 4). Because the scope of the claimed "graphical format" broadly but reasonably encompasses a report, we find that Groath's generation of a graph from data that matches report parameters is at least suggestive of Appellant's argued limitations of storing the graphical format of performance information to a database (repository).

However, even if, *arguendo*, Groath's performance report data is actually converted to a graphical format *after storage* (as argued by Appellant, App. Br. 12; *see also* FF 4), we nevertheless find that Groath also teaches an embodiment where the graphical format of performance report graphs may be changed by the user and *saved* using a feature referred to as "CHARTLOOK." (*See* FF 5-6).

In particular, we find Groath teaches that the "chartlook" (i.e., graphical format) of the performance data can be saved to "a location that can be called from the macro where the saved 'chartlook' *should then set the settings for the next graphs run with the* /CHARTLOOK='file'" (FF 6).

Therefore, we find that Groath's "chartlook" feature teaches and/or suggests the argued claim limitations of "storing the graphical format of the performance information in a repository." (*See* representative claim 1).

While our reading of Appellant's claim 1 on the Groath reference has departed from some aspects of the Examiner's reading, it is our view that Appellant has been given full and fair notice of the references. Appellant is responsible for all that is disclosed by the collective teachings of the cited references. *See In re Zenitz*, 333 F.2d 924, 926 (CCPA 1964) ("This court has held in a number of decisions that a United States patent speaks for all it discloses as of its filing date, even when used in combination with other references."). Our reviewing court has stated: "[t]he use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." *In re Heck*, 699 F.2d 1331, 1333 (Fed. Cir. 1983) (quoting *In re Lemelson*, 397 F.2d 1006, 1009 (CCPA 1968)). Even though, in some instances, we sustain rejections for different reasons than those advanced by the Examiner, our position is still based upon the collective teachings of the references and does not constitute a new ground of rejection. *See In re Bush*, 296 F.2d 491, 496 (CCPA 1961); *In re Boyer*, 363 F.2d 455, 458 n.2 (CCPA 1966).

CONCLUSION

Based on the findings of facts and analysis above, we conclude that Appellant has not met his/her burden of showing that the Examiner erred in rejecting representative claim 1 (and claims 2-11, 13-41, 43-70, and 72-175 that fall therewith) as being unpatentable under 35 U.S.C. § 103(a).

DECISION

We affirm the Examiner's decision rejecting claims 1-11, 13-41, 43-70, and 72-175.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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